



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Francis L. Daniel  
Tidewater Regional Director  
(757) 518-2000

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT

#### ISSUED TO

**Commander, Navy Region, Mid-Atlantic, Regional Engineer**

**Registration Number 60033**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §10.1-1307, §10.1-1316, and §10.1-1319 between the State Air Pollution Control Board and the Commander, Navy Region, Mid-Atlantic, Regional Engineer, for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "CNRMA-RE" means Commander, Navy Region, Mid-Atlantic, Regional Engineer.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.

6. "NAB" means the US Navy – Naval Amphibious Base, Little Creek, with the listed address of 1450 Gator Blvd, Norfolk, VA 23521.
7. "Order" means this document, also known as a Consent Order.
8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
9. "Title V Permit" means Virginia Title V Operating Permit, which became effective April 23, 2003 and expires on April 23, 2008.
10. "NSR Permit" means New Source Review Stationary Source Permit to modify and operate, which became effective July 13, 2001.
11. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-80-10 et seq.).

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The CNRMA-RE operates the Naval Amphibious Base – Little Creek, located in the vicinity of Rt 60 and Diamond Springs Rd, with the listed address 1450 Gator Blvd, Norfolk, VA 23521. The NAB is a federal facility that provides a variety of support activities for naval operations, including the dispensing of various fuels such as gasoline, diesel, and kerosene.
2. DEQ issued to the CNRMA-RE a Title V Permit and a NSR Permit for operation of the NAB under applicable Regulations of the Board. The permits were issued under the name Norfolk Naval Base – Navy Public Works Center.
3. Section 10.1-1322 of the Code of Virginia states: "Permits are enforceable in the same manner as regulations and orders of the State Air Pollution Control Board."
4. On February 3rd and 6th, 2004, the CNRMA-RE notified DEQ that permit throughput limits for gasoline, diesel and kerosene had been exceeded at the NAB. The permit exceedances occurred during several months in 2003 and January 2004.
5. CNRMA-RE reported that the NAB exceeded the permitted 5,584,000 gallon annual gasoline throughput limit (calculated monthly as the sum of each consecutive 12-month period) with a high throughput of 5,588,766 gallons during the months of March, April, May, July, and August 2003. These exceedances violated the Title V Permit condition III.F.1.c and NSR Permit condition 19.
6. CNRMA-RE reported that the NAB exceeded the permitted 271,026 gallon annual diesel throughput limit (calculated monthly as the sum of each consecutive 12-month period) with a high throughput of 714,428 gallons during October 2003

through January 2004. These exceedances violated the Title V Permit condition III.F.1.d and NSR Permit condition 20.

7. CNRMA-RE reported that the NAB exceeded the permitted 42,100 gallon annual kerosene throughput limit (calculated monthly as the sum of each consecutive 12-month period) with a high throughput of 66,123 gallons during April 2003 through January 2004. These exceedances violated the Title V Permit condition III.I.1.f and NSR Permit condition 31.
8. Pursuant to the Title V Permit CNRMA-RE is required to submit for NAB to DEQ by January 29, 2004 the results of monitoring, a Semi-Annual Monitoring Report, for the period of June 1, 2003 to November 30, 2003. Condition VI.C.3.b requires that the report state all deviations from permit requirements.
9. The NAB Semi-Annual Monitoring Report for the period of June 1, 2003 to November 30, 2003 was received at DEQ on January 21, 2004. The report did not state the Title V Permit limit throughput exceedances of gasoline, diesel, and kerosene that occurred during the reporting time period as referenced above in Items 5, 6, and 7.
10. The CNRMA-RE violated the NAB Title V Permit by failing to report all deviations from permit requirements that occurred during the Semi-Annual Monitoring report period of June 1, 2003 to November 30, 2003.
11. DEQ issued the CNRMA-RE a Notice of Violation on February 23, 2004, under the name Norfolk Naval Base- Navy Public Works Center, for NAB advising of the above listed throughput exceedances and applicable regulatory and Title V and NSR Permit requirements. In addition the Notice of Violation included that the submitted Title V Semi-Annual Monitoring Report for the period of June 1, 2003 to November 30, 2003 did not report all deviations from Title V Permit requirements.
12. DEQ received a corrected Semi-Annual Monitoring Report for the period of June 1, 2003 to November 30, 2003 submitted by the CNRMA-RE for NAB on April 23, 2004. The corrected report listed the permit limit throughput exceedances of gasoline, diesel, and kerosene from Title V Permit limit requirements during the report period.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders the CNRMA-RE, and the CNRMA-RE voluntarily agrees to submit within 90 days of the effective date of this Consent Order NSR and Title V air permit applications to address the exceedances of permit limits in the existing NSR and Title V Permits, and to obtain the Permits.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the CNRMA-RE for good cause shown by the CNRMA-RE, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the CNRMA-RE for NAB by DEQ on February 23, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order only, CNRMA-Re admits the jurisdictional allegations in the Order but does not admit the factual allegations or legal conclusions contained herein.
4. The CNRMA-RE declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of substantive or procedural rights to which the CNRMA-RE is entitled by Federal law, the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by the CNRMA-RE to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The CNRMA-RE shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, national emergency declared by the President and other circumstances beyond the CNRMA-RE's control, strike, or such other occurrence. The CNRMA-RE shall show that such circumstances were beyond

its control and not due to a lack of good faith or diligence on its part. The CNRMA-RE shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and the CNRMA-RE. Notwithstanding the foregoing, the CNRMA-RE agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the CNRMA-RE. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the CNRMA-RE from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable. At the CNRMA-RE's request, the Board or Director will also terminate this Order upon completion of the undertakings listed in Section D.
11. In accordance with the Federal Anti-Deficiency Act, the obligations of the Navy under this section are expressly conditioned on the availability of Congressional appropriations, which the CNRMA-RE agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the CNRMA-RE will promptly inform the TRO. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with the CNRMA-RE's consent.

12. By its signature below, the CNRMA-RE voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Aug. 12, 2004.

Francis L. Daniel

Francis L. Daniel, Regional Director  
for Robert G. Burnley, Director  
Department of Environmental Quality

Accepted on behalf of Commander, Navy Region, Mid-Atlantic by:

By: Cheryl F. Barnett

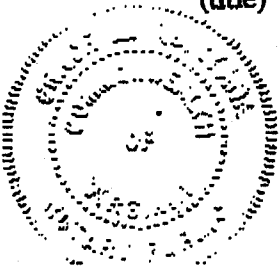
Date: 7/20/09

Commonwealth of Virginia

City/County of Norfolk

The foregoing document was signed and acknowledged before me this 20<sup>th</sup> day of  
July, 2004, by Grace M. Quintana,  
(month) (name)

Secretary U.S. Navy, Regional Engineer, Navy Region, Mid-Atlantic.  
(title)



Grace M. Quintana

Notary Public

My commission expires: November 30, 2007